

**Recommendation for Council Action – Backup
Floodplain Variance Request – 4515 Avenue D**

SUMMARY OF FINDINGS:

1. THE DEVELOPMENT DOES NOT CAUSE ADVERSE FLOODING ON OTHER PROPERTY. The applicant's engineer submitted technical data that indicates that the proposed development will not increase flood heights.
2. THE APPLICANT PROPOSES TO REDUCE FLOOD RISK WITH THIS REDEVELOPMENT. This redevelopment is essentially a privately funded flood risk reduction project in a location that the Watershed Protection Department does not currently have plans for a future project. The applicant proposes to remove the existing home, which has a lowest floor elevation that is 1.7 feet below the 100-year floodplain elevation and replace it with a new home that has a lowest floor elevation 3.0 feet above the 100-year floodplain elevation and 2.3 feet above the 500-year floodplain elevation.
3. PROPOSED LOWEST FLOOR EXCEEDS MINIMUM REQUIRED ELEVATION. The lowest floor elevation of the proposed home is 3.0 feet above the 100-year floodplain elevation and 2.3 feet above the 500-year floodplain elevation. The minimum required elevation is one-foot above the 100-year floodplain elevation.
4. NO SAFE ACCESS. The depth of water at the proposed house will be 2.4 feet during the 100-year flood event and 2.0 feet during the 25-year flood event. The depth of water at the curb in front of this property will be 2.9 feet during the 100-year flood event and 2.5 feet during the 25-year flood event. First responder personnel do not have safe access to the house during a 100-year flood event.
5. HARDSHIP CONDITIONS FOR THE PROPERTY PARTIALLY EXIST. The safe access rule presents a hardship for this site since safe access to the existing home cannot be achieved to a public right-of-way. However, there is in existing residential use on the property that could be maintained.

APPLICABLE CODE AND VARIANCES REQUESTED

- I. LDC Section 25-12-3, (Local Amendments to the Building Code), Section 1612.4.3 Means of Egress provides that normal access to a building shall be by direct connection with an area that is a minimum of one foot above the design flood elevation.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section 1612.4.3, to allow a new single family residential building to be constructed without normal access, either vehicular or pedestrian, to an area that is a minimum of one foot above the design flood elevation. The lot is entirely in the 25-year and 100-year floodplains of Waller Creek. The approximate depth of floodwater at the house is 2.0 feet in the 25-year event and 2.4 feet in the 100-year event.*

- II. LDC Section 25-12-3, (Local Amendments to the Building Code), Section G102.3 Nonconforming Uses prohibits expanding, changing, enlarging, or altering the use of a premises in a way which increases its nonconformity.

VARIANCE REQUESTED: *The applicant requests a variance to Building Code Section G102.3 to allow enlarging the total conditioned area on the property that does not have safe access out of the floodplain.*

- III. LDC Section 25-7-152 Dedication of Easements and Rights-of-Way requires that the owner of real property proposed to be developed dedicate to the public an easement or right-of-way for a drainage facility, open or enclosed, and stormwater flow to the limits of the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to exclude the footprint of the building from the requirement to dedicate a drainage easement to the full extent of the 100-year floodplain.*

- IV. LDC Section 25-7-92 (A) and (B) Encroachment on Floodplain Prohibited prohibits encroachment of a building on the 25-year floodplain and the 100-year floodplain.

VARIANCE REQUESTED: *The applicant requests a variance to allow placement of the building addition within the 25-year floodplain and 100-year floodplain of Waller Creek.*

PREREQUISITES FOR GRANTING VARIANCES AND FINDINGS:

Per LDC Section 25-12-3, Technical Codes, Section G105.7 Variances, variances shall only be issued upon consideration of the following prerequisites:

PREREQUISITE

1) A technical showing of good and sufficient cause based on the unique characteristics of the size, configuration or topography of the site.

Insufficient causes for issuing a variance may include the following:

- *Less than a drastic depreciation of property.*
- *Convenience of property owner.*
- *Circumstances of owner not land.*
- *To obtain better financial return.*
- *Property similar to others in neighborhood.*
- *Hardship created by owner's own actions.*

FINDING

1) **CONDITION IS MET.** The applicant has demonstrated a good and sufficient cause that justifies these variance requests for a redevelopment that decreases flood risk by elevating the home above the floodplain.

2) A determination that failure to grant the variance would result in exceptional hardship by rendering the lot undevelopable;

The location of the floodplain on the property is a characteristic of the land. Hardship refers to the effect of the floodplain status of the land on its use; it does not refer to personal or financial circumstances of the current owner of the land. In fact financial hardship, inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors do not qualify as exceptional hardships. The applicant has the burden of proving exceptional hardship. FEMA advises that the reasons for granting floodplain management variances must be substantial and the proof compelling. The claimed hardship must be exceptional, unusual and peculiar to the property involved.

3) A determination that granting of a variance would not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing laws or ordinances.

4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Relief is defined as respite from unnecessary hardship. Unnecessary hardship is defined as:

- *Loss of all beneficial or productive use.*
- *Deprivation of reasonable return on property.*
- *Deprivation of all or any reasonable use.*
- *Rendering property valueless.*
- *Inability to develop property in compliance with the regulations.*
- *Reasonable use cannot be made consistent with the regulation.*

5) Notification to the applicant in writing over the signature of the building official that the issuance

2) **CONDITION IS NOT MET.** This property has an existing residential use. The failure to attain these variances would not render the lot undevelopable, however, it would leave the existing residential use at higher risk during flood events than is proposed with the redevelopment.

3) **CONDITION IS MET.** The proposed redevelopment does not increase flood heights. The redevelopment also does not increase public safety threat since it proposes to elevate the home above the floodplain.

4) **CONDITION IS MET.** The existing residential use could be maintained without approval of the requested variances. However, the variances requested are the minimum necessary to reduce the flood risk with the redevelopment.

5) **CONDITION IS MET.** The finished floor elevation of the proposed home will not be below

of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

the 100-year floodplain elevation. No notification from the building official shall be required.